

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

**DAVID LEE GRILLETTE,  
#57139-177,  
Movant,**

**v.**

**UNITED STATES OF AMERICA,  
Respondent.**

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**CIVIL NO. 3:19-CV-2833-S-BK  
(Criminal No. 3:18-CR-195-S-1)**

**ORDER ACCEPTING FINDINGS, CONCLUSIONS AND RECOMMENDATION  
OF THE UNITED STATES MAGISTRATE JUDGE**

The United States Magistrate Judge made Findings, Conclusions, and a Recommendation in this case. No objections were filed. The Court reviewed the proposed Findings, Conclusions, and Recommendation for plain error. Finding none, the Court **ACCEPTS** the Findings, Conclusions, and Recommendation of the United States Magistrate.

IT IS THEREFORE ORDERED that the motion to vacate sentence under 28 U.S.C. § 2255 is summarily **DISMISSED WITHOUT PREJUDICE** as it does not present a cognizable basis for Section 2255 relief. *See* Rule 4(b) of the RULES GOVERNING SECTION 2255 PROCEEDINGS.

Liberally construed to seek relief under 28 U.S.C. § 2241, the motion is **DISMISSED WITHOUT PREJUDICE** for want of jurisdiction.


Considering the record in this case and pursuant to Federal Rule of Appellate Procedure 22(b), Rule 11(a) of the Rules Governing Section 2255 Proceedings in the United States District Court, and 28 U.S.C. § 2253(c), the Court **DENIES** a certificate of appealability insofar as it is necessary. The Court adopts and incorporates by reference the Magistrate Judge's Findings, Conclusions and Recommendation filed in this case in support of its finding that the movant has failed to show (1) that reasonable jurists would find this Court's "assessment of the constitutional

claims debatable or wrong,” or (2) that reasonable jurists would find “it debatable whether the petition states a valid claim of the denial of a constitutional right” and “debatable whether [this Court] was correct in its procedural ruling.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).<sup>1</sup>

If movant files a notice of appeal, he must pay the \$505.00 appellate filing fee or submit a motion to proceed *in forma pauperis*.

**SO ORDERED.**

SIGNED March 31, 2020.

  
**UNITED STATES DISTRICT JUDGE**

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<sup>1</sup> Rule 11 of the Rules Governing § 2255 Proceedings reads as follows:

**(a) Certificate of Appealability.** The district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant. Before entering the final order, the court may direct the parties to submit arguments on whether a certificate should issue. If the court issues a certificate, the court must state the specific issue or issues that satisfy the showing required by 28 U.S.C. § 2253(c)(2). If the court denies a certificate, the parties may not appeal the denial but may seek a certificate from the court of appeals under Federal Rule of Appellate Procedure 22. A motion to reconsider a denial does not extend the time to appeal.

**(b) Time to Appeal.** Federal Rule of Appellate Procedure 4(a) governs the time to appeal an order entered under these rules. A timely notice of appeal must be filed even if the district court issues a certificate of appealability. These rules do not extend the time to appeal the original judgment of conviction.